

report that appellant had a two percent right lower extremity impairment based on a partial meniscectomy pursuant to Table 17-33 at page 546 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). On April 30, 2008 the Office granted appellant a schedule award for a two percent permanent impairment of the right lower extremity.

Appellant requested an oral hearing and submitted an October 24, 2008 report from Dr. Martin Fritzhand, Board-certified in occupational medicine, who rated a 10 percent right lower extremity impairment pursuant to Table 17-10 at page 537 of the A.M.A., *Guides*. By decision dated November 18, 2008, an Office hearing representative affirmed the April 30, 2008 decision. In a November 18, 2009 decision,¹ the Board affirmed the November 18, 2008 Office decision. The complete facts of this case are set forth in the Board's November 18, 2009 decision and are herein incorporated by reference.

In a December 20, 2009 report, Dr. Fritzhand restated his opinion that appellant had a 10 percent lower extremity impairment pursuant to Table 17-10 of the fifth edition of the A.M.A., *Guides*. By letter dated January 12, 2010, appellant's attorney requested reconsideration.

The Office informed Dr. Fritzhand by letter dated January 25, 2010 that he needed to submit a new report and impairment rating in conformance with the updated, sixth edition of the A.M.A., *Guides*, which became effective as of May 1, 2009.²

In a February 9, 2010 report, Dr. Fritzhand rated a six percent permanent impairment of the right lower extremity pursuant to Table 16-3, Table 16-6, Table 16-7 and Table 16-8 at pages 509, 516-19 of the sixth edition of the A.M.A., *Guides*. He based this rating on a Class 1, permanent impairment for a total meniscectomy. Dr. Fritzhand calculated an impairment at Table 16-3, adjusted from Grade C to Grade B, using the grade modifiers at Table 16-6, Table 16-7 and Table 16-8.

An Office medical adviser on March 10, 2010 stated that he was unable to render an opinion regarding Dr. Fritzhand's February 9, 2010 report because he had calculated the six percent impairment rating at Table 16-3 using a diagnosis of total meniscectomy. He noted that the January 25, 2010 statement of accepted facts indicated that appellant had previously been given a two percent right lower extremity impairment, under Table 16-3, the default impairment is two percent for a partial meniscectomy and seven percent for a total meniscectomy. The Office medical adviser stated that he needed to review a copy of the June 1, 2007 operative report in order to clarify whether the diagnosis of partial or total meniscectomy was more appropriate.

In an April 7, 2010 report, an Office medical adviser stated that he had reviewed the June 1, 2007 operative report, which indicated that appellant underwent a partial meniscectomy.

¹ Docket No. 09-952 (issued November 18, 2009).

² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). As of May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used. FECA Bulletin No. 09-03 (issued March 15, 2008).

He concluded that appellant had a two percent permanent impairment of the right lower extremity under the sixth edition of the A.M.A., *Guides*. The Office medical adviser found that appellant had a default impairment of Class I, which yielded a Grade C impairment of two percent at Table 16-3, page 509 of the A.M.A., *Guides*.³ He applied the net adjustment formula at pages 521-22 of the A.M.A., *Guides*,⁴ finding that the grade modifier at Table 16-6 for functional history was zero, the grade modifier for physical examination at Table 16-7 was one, and the grade modifier at Table 16-8 for clinical studies was zero. The Office medical adviser then subtracted the zero grade modifiers at Table 16-6 and Table 16-8 from the grade modifier of one at Table 16-7; this adjusted appellant's impairment for partial meniscectomy from Grade C to Grade B, for a two percent final impairment of the right lower extremity. He noted that Dr. Fritzhand had based his six percent impairment rating on a diagnosis of total meniscectomy.

By decision dated April 16, 2010, the Office denied modification of its November 18, 2008 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulations⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁸

ANALYSIS

The Office granted appellant a schedule award for a two percent right lower extremity impairment based on a partial meniscectomy, using the applicable table of the fifth edition of the A.M.A., *Guides*. Appellant subsequently sought an additional award and requested reconsideration. In support of his request, he submitted Dr. Fritzhand's February 9, 2010 report indicating that appellant had a six percent right lower extremity impairment pursuant to the sixth edition of the A.M.A., *Guides*. The Office medical adviser reviewed this report and Dr. Colosimo's June 1, 2007 operative report; he then considered appellant's entitlement to an

³ A.M.A., *Guides* at 509.

⁴ *Id.* at 521-22.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404. Effective May 1, 2009, the Office began using the A.M.A., *Guides*. (6th ed. 2009).

⁷ *Id.*

⁸ *Veronica Williams*, 56 ECAB 367, 370 (2005).

additional schedule award by applying the updated, sixth edition of the A.M.A., *Guides*. The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the lower extremities is located at Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade. This section states:

“The Impairment Class (IC) is determined first, by using the corresponding diagnosis-based regional grid. The grade is then determined using the adjustment grids.

“Once the impairment class has been determined, based on the diagnosis, the grade is initially assigned the default value, C. The final impairment grade, within the class, is calculated using the grade modifiers, or non-key factors, as described in [s]ection 16.3. Grade modifiers include functional history, physical examination and clinical studies. The grade modifiers are used in the net adjustment formula described in [s]ection at 16.3d to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down from the default value, C by the calculated net adjustment....”⁹

Using the formula above and the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*, an Office medical adviser found that appellant had a Class 1 impairment; *i.e.*, a mild problem. He then applied the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, finding that appellant had a grade modifier of zero for physical examination and clinical studies at Table 16-6 and Table 16-8, then subtracting these totals from the functional history grade modifier of 1 at Table 16-7. Based on this calculation the Office medical adviser adjusted appellant’s impairment for partial meniscectomy from Grade C to Grade B, for a final two percent right lower extremity impairment. The Board finds that the Office medical adviser properly determined that appellant had a two percent permanent impairment of his right lower extremity, as he calculated this rating based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. The only other impairment rating in the record was that of Dr. Fritzhand, who found that appellant had a six percent right lower extremity impairment. This report is of diminished probative weight, however, he based this rating upon an incorrect diagnosis of total meniscectomy.¹⁰ The Office properly found that the opinion of the Office medical adviser constituted sufficient medical rationale to support the Office’s April 16, 2010 schedule award decision. As appellant did not submit any medical evidence to support an additional schedule award greater than the two percent for the right lower extremity already awarded, the Board will affirm the Office’s April 16, 2010 decision.

⁹ A.M.A., *Guides* at 497.

¹⁰ The Board notes that a description of appellant’s impairment must be obtained from appellant’s physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

CONCLUSION

The Board finds that appellant has no more than a two percent permanent impairment of the right lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 16, 2010 is affirmed.

Issued: February 17, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board